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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/683,995
Filing Date: March 10, 2002
Appellant(s): CURRY ET AL.

Michael Dryja (Reg. No.39,662)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/29/2008 appealing from the Office action

mailed 11/28/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,564,248   BUDGE   5-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Budge

et al., US pat. No.6,564,248 (Hereafter Budge).

As to claim 1, Budge discloses a system comprising:

a network and a first client (sub-system 2 of fig.1) having a first email messaging

program (50 fig.1) installed thereon, a composing user (user) composing a message on

the first email messaging program, the composing user recording media on the first

email message program, the first email messaging program sending the message to a

receiving user over the network (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see

abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49).

a second client (receiving sub-system 4 of fig.1) having a second email

messaging program (using same software program in fig.2B for receiving sub-system 4

of fig.1) installed thereon on which the receiving user receives the message over the

network, the second email messaging program playing back the media upon the user

viewing the message (i.e., playing back the audio and video portions of the received

video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54);

wherein the first email messaging program sends the message and the media over the

network by itself, without having to use any other email messaging program on the first

client (video email messages are sent as video files or self contained executable files,

see *col.4 lines 31-49,* col.5 lines 5-58 and col.6 lines 20-54).

As to claim 2, Budge discloses a streaming media server, the first email messaging

program uploading the media to the streaming media server upon the message being

sent to the receiving user over the network, and the second email messaging program

downloading the media from the streaming media server over the network upon the

receiving user viewing the message (see fig.5, col.5 line 12 to col.6 line 54).

As to claims 3, 11, 14, Budge further discloses an email messaging program attaches

the media as an attachment to the message upon the message being sent to the

receiving user over the network, and the second email messaging program receives the

media as the attachment to the message over the network (i.e., sending email with an

attach executable video email player, see col.3 line 54 to col.4 line 49 and col.5 line 26

to col.6 line 54).

As to claims 4, Budge discloses at least one of: the Internet, an intranet, an extranet, a

local-area network (LAN), a wide-area network (WAN), a wired network, a wireless

network, and a telephony network (see col.3 lines 7-53).

As to claim 5, Budge discloses at least one of the first clients and the second client

comprises: a desktop computer, a laptop computer, a cellular phone, a wireless phone,

a set-top box, and a personal digital assistant (PDA) device (see col.3 line 17 to col.4

line 49).

As to claims 6 and 7, Budge discloses text and at least one of: audio, video, streaming

audio and streaming video (see col.5 line 26 to col.6 line 54).

As to claim 8, Budge discloses a system comprising:

        a networking mechanism communicatively coupling the system to a network

(Internet, col.4 lines 5-29),

        an email messaging program (50 fig.1) having at least a composing capability for

a user (sending sub-system 2 of fig.1) to compose a message and record media

associated with the message to send to another user over the network via the

networking mechanism (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49 and

col.5 lines 26-67),

wherein the user composes the message and records the media on the email

messaging program (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see

abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

wherein the first email messaging program sends the message and the media over the

network by itself, without having to use any other email messaging program on the first

client (video email messages are sent as video files or self contained executable files,

see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 9, Budge discloses an operating system on which the email messaging

program runs (see col.4 line 31 to col.5 line 58 and col.6 lines 1-54).

As to claim 10, Budge discloses capability uploads the media to a streaming media

server communicatively coupled to the network over the network via the networking

mechanism upon the message being sent to the other user over the network via the

networking mechanism (see figs.4, 5, col.5 line 12 to col.6 line 54).

As to claims 12 and 13, Budge discloses a playback capability for the user to view

messages received from other users over the network via the networking mechanism

and play back received media associated with the messages received and downloading

the media associated with one of the messages received from the streaming media

server over the network via the networking mechanism upon the user viewing the one of

the messages received (i.e., playing back the audio and video portions of the received

video email, see figs.4, 5, col.3 line 17 to col.4 line 49).

 As to claim 15, Budge discloses at least one of: an analog modem, an Integrated

Services Digital Network (ISDN) adapter, a network adapter card, a network adapter

chipset, a cable modem, a Digital Subscriber Loop (DSL) modem, a digital modem, and

a wireless modem (see col.3 line 6 to col.4 line 49).

As to claims 16 and 17, Budge discloses text and at least one of: audio, video,

streaming audio and streaming video (see col.5 line 26 to col.6 line 54).

As to claim 18, Budge discloses a method comprising:

        saving a message entered by a user by an email messaging program (see

abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

        recording media associated with the message by the email messaging program,

uploading the media to a streaming media server over a network by the email

messaging program (50 fig.1) and sending the message over the network by the email

messaging program (see figs.1, 3, col.4 line 50 to col.6 line 54),

        wherein the user composes the message and records the media on the email

messaging program (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see

abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

wherein the first email messaging program sends the message and the media over the

network by itself, without having to use any other email messaging program on the first

client (video email messages are sent as video files or self contained executable files,

see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 19, Budge discloses receiving a second message over the network by the

email messaging program in response to a user requesting the email messaging

program to display the second message, displaying the second message by the email

messaging program, downloading second media associated with the message from the

streaming media server over the network by the email messaging program and playing

back the second media by the email messaging program (i.e., playing back the audio

and video portions of the received video email, see figs.4, 5, col.3 line 17 to col.4 line

49).

Claims 20 and 24 are rejected for the same reasons set forth in claim 18. As to the

added limitation, Budge discloses sending the media as an attachment to the message

(i.e., sending email with an attach executable video email player, see col.3 line 54 to

col.4 line 49 and col.5 line 26 to col.6 line 54).

As to claim 21, Budge discloses receiving a second message over the network by the

email messaging program; in response to a user requesting the email messaging

program to display the second message, displaying the second message by the email

messaging program, downloading second media associated with the message from the

streaming media server over the network by the email messaging program and playing

back the second media by the email messaging program (i.e., playing back the audio

and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line

49, col.5 line 12 to col.6 line 54).

As to claim 22, Budge discloses a computer-readable medium having instructions

stored thereon for an email messaging program of a system, the email messaging

program comprising:

        means for composing a first message by a first user (1 fig.1) and for recording

first media associated with the first message to send to a second user (4 fig.1) over a

network (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

        means for viewing a second message received from the second user over the

network by the first user, and for playing back second media associated with the second

message (i.e., playing back the audio and video portions of the received video email,

see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54),

            wherein the user composes the message and records the media on the

email messaging program (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see

abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 23, Budge discloses uploading the first media to a streaming media server communicatively coupled to the network over the network upon the first message being sent to the second user over the network, and the means for viewing and for playing back downloads the second media from the streaming media server over the network upon the first user viewing the second message (i.e., playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54).

Response to Arguments

- Appellant asserts that the Budge reference does not disclose the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client.

Examiner respectfully disagrees. Budge explicitly discloses wherein the first email messaging program (video email player 220 fig.2B) sends the message and the media over the network by itself (the video email player), without having to use any other email messaging program on the first client [i.e., using the video email player to receive video email messages from the Email client (270 fig.2B) and then send/transfer video email messages such as video files or self contained executable files to the receiving system, see fig.2B, col.4 lines 31-49, col.5 lines 5-58 and col.6 lines 1-54]. As a result, the video player software allows the receiving sub-system to play the email messages without the necessity of previously installing special software at the receiving sub-system. Appellant's arguments are fully considered but they are found not persuasive.

(10) Response to Argument

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Khanh Dinh/

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